

# UNOFFICIAL COPY



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Doc# 1720034085 Fee \$50.00

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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/19/2017 02:07 PM PG: 1 OF 7

This Instrument Prepared By:

Office Depot, Inc.  
6600 North Military Trail  
Boca Raton, Florida 33496  
Attention: Office of the General Counsel, Real Estate

Upon Recordation Return to:

Office Depot, Inc.  
6600 North Military Trail  
Boca Raton, Florida 33496  
Attention: Office of the General Counsel, Real Estate

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT – OD#02418A

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") executed this 2<sup>nd</sup> day of June, 2017, between Natixis, New York Branch, a branch of Natixis S.A., a société anonyme à conseil d'administration, organized and existing under the laws of France ("Mortgagee") and Office Depot, Inc., a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, AmCap Northpoint II, LLC, a Delaware limited liability company ("Landlord") and Tenant are parties to that certain lease dated September 1, 2016, as amended (collectively, the "Lease"), relating to certain premises located at North Point Shopping Center, 392 E. Rand Road, Arlington Heights, Illinois (the "Premises"), said Premises being more particularly described in the Lease and being situated on a portion of the real property described in **EXHIBIT A** attached hereto and made a part hereof; and

WHEREAS, Mortgagee has committed to make a/or has made a mortgage loan to Landlord secured by a Mortgage dated of even date herewith ("Mortgage") covering the Premises.

NOW, THEREFORE, it is mutually agreed as follows:

1. To the extent that Tenant's rights and entitlements under the Lease are not diminished or otherwise affected, and except as provided in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage.

2. In the event of a foreclosure of the Mortgage or should Mortgagee obtain title by deed in lieu thereof, or otherwise, Mortgagee, for itself, its successors or assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure), agrees that Tenant may continue its occupancy of the Premises in accordance with the terms and provisions of the Lease, so long as Tenant is not in material default under the Lease beyond any applicable notice and cure period. Mortgagee agrees not to name Tenant as a party defendant in any foreclosure action.

3. Tenant agrees to attorn to: (a) Mortgagee when in possession of the Premises; (b)

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a receiver appointed in an action or proceeding to foreclose the Mortgage or otherwise; or (c) to any party acquiring title to the Premises as a result of foreclosure of the Mortgage or deed in lieu thereof. Tenant further covenants and agrees to execute and deliver, upon request of Mortgagee, or its assigns, an appropriate agreement of attornment, in form and content reasonably acceptable to Tenant and Mortgagee (but which shall not amend the terms of the Lease or otherwise diminish Tenant's rights thereunder) with any subsequent titleholder of the Premises.

4. So long as the Mortgage on the Premises remains outstanding and unsatisfied and provided Tenant receives a fully executed original of this Agreement from Mortgagee, Tenant will deliver to Mortgagee a copy of all notices of default given to Landlord by Tenant. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default under the Lease as therein provided, Mortgagee shall have the right (but not the obligation) to cure such default within the same period of time as is allowed Landlord under the Lease.

5. If Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after Mortgagee's succession to the interest of Landlord under the Lease, have the same remedies against Mortgagee for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided further, however, that Mortgagee shall not be:

(a) liable for any warranty, act or omission of any prior landlord (including Landlord), except those of a continuing nature; or

(b) subject to any offsets or defense which Tenant might have against any prior landlord (including Landlord), except (i) offsets specifically provided for in the Lease, or (ii) those which arose out of such Landlord's default under the Lease and accrued after Tenant has notified Mortgagee and given Mortgagee an opportunity to cure as provided in Paragraph 4 above; or

(c) bound by any rent or additional charges which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

(d) bound by any amendment or modification of the Lease or any collateral agreement made without Mortgagee's consent (which consent shall not be unreasonably withheld) which would (i) reduce fixed minimum rent, or (ii) reduce any other monetary obligation of Tenant under the Lease.

6. Mortgagee consents to the application and disposition of casualty proceeds and condemnation awards in accordance with the Lease.

7. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure) of the parties.

8. Any notices under this Agreement may be delivered by hand or sent by commercial delivery services or United States Postal Service express mail, in either case for overnight delivery with proof of service, or sent by certified mail, return receipt requested, to the following addresses:

To Tenant: Office Depot, Inc.  
6600 North Military Trail

**UNOFFICIAL COPY**

Boca Raton, Florida 33496  
 Attention: Vice President, Real Estate  
 Copy To: Office of the General Counsel, Real Estate (same  
 address)

To Mortgagee: Natixis, New York Branch ("Lender")  
 1251 Avenue of the Americas  
 New York, New York 10020  
 Attention: Real Estate Administration

The notice shall be deemed to have been given on the date it was actually received.

9. This Agreement may be executed and delivered in counterparts for the convenience of the parties.

10. If, within four (4) weeks of Tenant's execution of this Agreement, Tenant has not received a fully executed Agreement at the notice address listed above, this Agreement shall, at Tenant's option, be null and void.

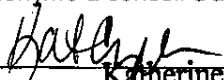
11. Tenant and Mortgagee represent and warrant to each other that neither (i) is listed on the Specifically Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury, pursuant to Executive Order No. 13224.66 Federal Register 49079 (September 25, 2001), or (ii) has been convicted, indicted, arraigned or pleaded nolo contendere, or been custodially detained on charges involving money laundering or predicate crimes to money laundering.


12. This Agreement shall be construed and enforced in accordance with the laws of the state in which the Premises is located.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

**MORTGAGEE:**

Natixis, New York Branch, a branch of Natixis S.A.,  
 a societe anonyme a conseil d'administration

By:   
 Print Name: Katherine Czech  
 Print Title: Vice President  
 Date: \_\_\_\_\_

By:   
 Print Name: BRIAN CLARK  
 Print Title: MANAGING DIRECTOR  
 Date: \_\_\_\_\_

**TENANT:**

Office Depot, Inc. a Delaware corporation

By: \_\_\_\_\_  
 Print Name: John Robert Koch  
 Print Title: EVP, Business Development  
 Date: \_\_\_\_\_

# UNOFFICIAL COPY

Boca Raton, Florida 33496  
Attention: Vice President, Real Estate  
Copy To: Office of the General Counsel, Real Estate (same address)

To Mortgagee: Natixis, New York Branch ("Lender")  
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

MORTGAGEE:  
Natixis, New York Branch, a branch of Natixis S.A.,  
a société anonyme à conseil d'administration

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Date: \_\_\_\_\_

TENANT:  
Office Depot, Inc., a Delaware corporation

By:  \_\_\_\_\_  
Print Name: John Robert Koch  
Print Title: EVP, Business Development  
Date: 6/20/17

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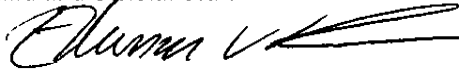
## MORTGAGEE'S ACKNOWLEDGMENT

STATE OF NEW YORK :  
 : SS  
COUNTY OF NEW YORK :

On this, the 11<sup>th</sup> day of July, 2017, before me a Notary Public in and for the State of New York, the undersigned officer, personally appeared Katherine Czech, who acknowledged herself to be a Vice President of NATIXIS, NEW YORK BRANCH, and that she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the vice president by herself as such officer.

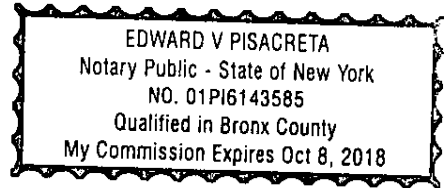
I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [~~Strike if inapplicable~~]

In witness whereof, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public [SEAL]

My Commission Expires:

\_\_\_\_\_, 20\_\_

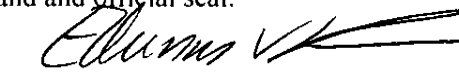


STATE OF NEW YORK :  
 : SS  
COUNTY OF NEW YORK :

On this, the 11<sup>th</sup> day of July, 2017, before me a Notary Public in and for the State of New York, the undersigned officer, personally appeared Brian Clark, who acknowledged himself to be a Managing Director of NATIXIS, NEW YORK BRANCH, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Managing Director by himself as such officer.

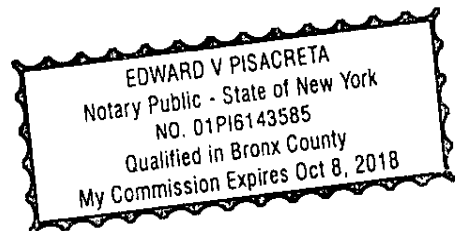
I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [~~Strike if inapplicable~~]

In witness whereof, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public [SEAL]

My Commission Expires:

\_\_\_\_\_, 20\_\_



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STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_, is signed to the foregoing instrument, who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.


Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public  
State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF PALM BEACH )

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared John Robert Koch as EVP, Business Development of OFFICE DEPOT, INC., a Delaware corporation, to me known to be the person who signed the foregoing instrument as such officer and he acknowledged that the execution thereof was his free act and deed as such officer for the use and purposes therein expressed and that the instrument is the act and deed of said corporation.

Given under my hand and official seal this 20<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
Notary Public  
State of Florida  
My Commission expires:



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## EXHIBIT A SHOPPING CENTER LEGAL DESCRIPTION

LOT 1 OF NORTHGATE SHOPPING CENTER SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THAT PART DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1 THENCE SOUTHWARD ALONG THE WESTERLY LINE OF SAID LOT 1, BEING THE EASTERLY LINE OF ARLINGTON HEIGHTS ROAD; SOUTH 1 DEGREES, 50 MINUTES, 41 SECONDS EAST, A DISTANCE OF 73.57 FEET; THENCE SOUTH 00 DEGREES, 17 MINUTES, 45 SECONDS EAST, A DISTANCE OF 470.00 FEET; THENCE SOUTH 13 DEGREES, 57 MINUTES, 59 SECONDS EAST, A DISTANCE OF 40.00 FEET; THENCE SOUTH 33 DEGREES, 05 MINUTES, 01 SECONDS EAST, A DISTANCE OF 37.43 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 33 DEGREES, 05 MINUTES, 01 SECONDS EAST, A DISTANCE OF 7.57 FEET, THENCE SOUTHEASTERLY ALONG A LINE BEING 50.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE CENTER LINE OF RAND ROAD, SOUTH 48 DEGREES, 24 MINUTES, 05 SECONDS EAST A DISTANCE OF 387.47 FEET; THENCE SOUTH 50 DEGREES 47 MINUTES 20 SECONDS EAST A DISTANCE OF 48.01 FEET; THENCE NORTH 48 DEGREES, 24 MINUTES, 05 SECONDS WEST, A DISTANCE OF 444.74 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PIN: 03-17-301-017, 03-17-301-019, 03-17-301-020, 03-17-301-021 and 03-17-301-022

202 E. Rand Road + 470 E. Rand Road  
Common Address: Rand Road, Arlington Heights Road and Palatine Road, Arlington Heights,  
Illinois

Arlington Heights, IL 60004